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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. ~~311~~. 2

WILLIAM SCHNEIDERMAN,
Petitioner,

against

UNITED STATES OF AMERICA.

BRIEF FOR PETITIONER.

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INDEX.

	PAGE
STATEMENT	2
Basic Questions Involved	3
STATEMENT OF FACTS	5
The Applicable Statutory Law	7
Analysis of Opinions of the District Court and of the Circuit Court of Appeals	10
SPECIFICATION OF ASSIGNED ERRORS TO BE URGED	14
SUMMARY OF ARGUMENT	14
POINT I—Congress alone can make active membership in the Communist Party of America a bar to naturalization. It has not done so	18
POINT II—The belief in or advocacy of changes in the Constitution, even involving fundamental, social and economic changes, but by the method of amendment prescribed in the Constitution, does not preclude either a citizen or an applicant for citizenship from truthfully taking an oath to support the Constitution	25
POINT III—The decision of the lower court constitutes a drastic abridgment of freedom of political belief and thought, of free speech and of the freedom of the press	27

PAGE

POINT IV—The decree of the naturalization court cannot be set aside and a naturalized citizen be subjected years after naturalization to such drastic action as the deprivation of his citizenship on the basis of a charge that he made a false oath to support the Constitution because of a claim that he believed in and advocated the overthrow of the Government by force, except upon direct and substantial proof that he did so believe and advocate. There is no proof of such proof or advocacy on petitioner's part 31

CONCLUSION: The decree of the Circuit Court of Appeals should be reversed 35

APPENDIX:

Statutes governing deportation as they stood in 1927 36

Statutes governing deportation as they stand today 40

Table of Cases Cited.

Bridges v. *State of California*, U. S. Supreme Court Bulletin 235 (1941) 28, 29

Kessler v. *Strecker*, 307 U. S. 22 (1939) 7, 24

Lovell v. *Griffin*, 303 U. S. 444 (1938) 27

National Prohibition Cases, 253 U. S. 350 (1920) 26

Powe v. *United States*, 109 Fed. (2d) 147 (C. C. A. 5th, 1940) cert. den. 309 U. S. 679 (1940) 30

Stromberg v. *California*, 283 U. S. 359 (1931) 27

Truax v. *Raich*, 239 U. S. 33 (1915) 30

United States v. *Parson*, 22 Fed. Supp. 149, (D. C. S. D. Calif., 1938) rev. on other gr. *sub nom. Graham* v. *United States*, 99 Fed. (2nd) 746 (C. C. A. 9th, 1938) 30

United States v. *Tapolcsanyi*, 40 Fed. (2d) 255 (C. C. A. 3rd, 1930) 25, 29, 30

Whitney v. *California*, 274 U. S. 357 (1927) 27

Wong Wing v. *United States*, 163 U. S. 288 (1896) 29

Table of Statutes Cited.

Act of Cong. June 29, 1906, Chap. 3592, Sec. 4, 34 Stat. 596 ..... 8, 19, 21, 22, 24

Act of Cong. June 29, 1906, Chap. 3592, Sec. 15, as amended (8 U. S. C. Sec. 405) 2, 9

Act of Cong. June 5, 1917, Chap. 29, Sec. 19 23

Act of Cong. October 16, 1918, Chap. 186, Secs. 1 and 2, 40 Stat. 1012 23

Act of Cong. June 5, 1920, Chap. 251, 41 Stat. 1008 37

PAGE

Judicial Code, Section 240 (a), 28 U. S. C., Sec. 347, as amended by the Act of Cong. February 13, 1925, Chap. 229, Sec. 1, 43 Stat. 938 2

Act of Cong. June 29, 1938, Chap. 819, 52 Stat. 1247 24

Act of Cong. June 20, 1939, Chap. 224, Sec. 3, 53 Stat. 844 24

Act of Cong. June 28, 1940, Chap. 439, Secs. 20 and 23, 54 Stat. 671, 673 23

BILLS INTRODUCED.

H. R. 12044 (72nd Cong., 1st sess.) 4

H. R. 7120 (74th Cong., 1st sess.) 4

To be argued by
WENDELL L. WILLKIE.

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BRIEF FOR PETITIONER.

On certiorari to the Circuit Court of Appeals for the Ninth Circuit to review the decision of that court on April 28, 1941 (R. 907, 919) affirming a decree of the District Court for the Northern District of California, Southern Division, entered on the 23rd day of July, 1940 (R. 54-56) vacating a decree of naturalization of the petitioner entered June 10, 1927 (R. 79).

I.

Opinions Below.

The opinion of the Circuit Court of Appeals for the Ninth Circuit is reported in 119 Fed. (2d) 500 (R. 908); the opinion of the District Court in 33 Fed. Supp. 510 (R. 39).

II.

Jurisdiction.

1. The statutory provision is Judicial Code, Section 240 (a), 28 U. S. C., Sec. 347, as amended by the Act of February 13, 1925, Chap. 229, Sec. 1, 43 Stat. 938.

2. The petition for certiorari was filed July 26, 1941 and granted October 13, 1941 (R. 922).

III.

Statement.

Petitioner came to this country in 1908, a child of three (R. 74). At eighteen, he declared his intention to become a citizen (R. 72, 358). His petition for naturalization was filed shortly after his twenty-first birthday (R. 78), and granted a few months later (R. 78, 79). For ten years preceding naturalization, he lived in poverty-stricken circumstances, had to go to work at the age of twelve as a newsboy (R. 357), and worked his way through high school and two and a half years of college study (R. 357-8).

Twelve years after citizenship was granted, the Government, pursuant to the provisions of the Act of June 29, 1906, Chap. 3592, Sec. 15, as amended, (8 U. S. C. Sec. 405), brought this proceeding against the petitioner, who had then lived *thirty years of his life in this country as a law abiding citizen,* who had never been arrested or censured by any law enforcement agency prior to or at the time of his naturalization (R. 360), and, so far as the record shows, has never been arrested or censured since, to cancel his citizenship on the ground that his certificate of citizenship had been fraudulently and illegally procured. Cancella-

tion of said certificate was decreed by the District Court, which decree was affirmed by the Circuit Court of Appeals for the Ninth Circuit. Thereafter, certiorari was granted bringing the aforementioned proceedings before this Court for review. In essence, the District Court (R. 39) and the Circuit Court of Appeals (R. 908) decided that, despite petitioner's unimpeached testimony that he had never believed in or advocated the use of force or violence, or disbelief in organized Government, and that he was and is attached to the Constitution and would support the same (R. 360-3, 896-7), and despite his good conduct both before and after naturalization, the mere fact of his membership in the Communist Party of America and participation in its activities as a boy of eighteen to twenty-one (the time of his naturalization), precluded the possibility of his then making truthfully an oath that he was attached to the principles of and would support and defend the Constitution of the United States and bear true allegiance to the same.

Basic Questions Involved.

1. Whether the court can impute certain views to a party and then hold that active membership in that party *ipso facto* precludes an applicant for citizenship from truthfully taking the oath required by the naturalization law to support the Constitution of the United States.

2. Whether one who believes in or advocates changes in the Constitution even involving fundamental, social and economic changes but by the method of amendment prescribed in the Constitution, can truthfully take an oath to support the Constitution.

3. Whether a naturalized citizen may be deprived of his citizenship many years after a competent court has duly

judged him to possess all of the prescribed qualifications, merely because some court then thinks that the principles of a party to which the naturalized citizen belonged are not harmonious with that court's views as to what constituted sound principles that should be held by a citizen.

The questions before this Court are of great importance. Terribly unjust as the decision of the lower courts was to William Schneiderman, the questions involved here transcend in magnitude his personal fate. The decision of the District Court sustained by the Circuit Court of Appeals is tantamount to a holding that as a matter of law, views may be imputed to a member of the Communist Party of America, *ipso facto and without further showing,* despite his unimpeached sworn statements to the contrary and his actual good behavior, establishing that he is not attached to the Constitution of the United States, but is disloyal thereto, is a believer in the overthrow of our Government by force and is *guilty of swearing falsely* when he takes an oath to support the Constitution. In brief, the lower courts in this case have established that, by imputation of beliefs, membership in the Communist Party, in and of itself, can justify the taking away of the *vested* right of citizenship, something which Congress has failed to do. On two separate occasions, bills providing for the exclusion from the United States of Communists have been presented to Congress but were not passed.* In view of the foregoing, a more perfect instance of judicial legislation, resulting in the destruction of political freedom and thought, cannot be conceived than that created by the decisions of the courts below in the instant case.

---

* H. R. 12044 (72d Cong., 1st sess.) passed House; reported by Senate Committee on Immigration on June 11, 1932. H. R. 7120 (74th Cong., 1st sess.) reported out of the House Committee on Immigration and Naturalization on May 27, 1935. Nothing further happened to either bill.

This case in no way involves any determination as to the soundness or wisdom of any of the principles of Communism or of the Communist Party of America or its right to function as a party. The Court is not asked to pass upon these matters in any way. The real question herein is whether our free institutions are to be preserved by totalitarian methods or whether there is to remain that basic fundamental of our constitutional growth, freedom of political thought and belief, with the inherent corollary of freedom of advocacy so long as that advocacy does not suggest the use of force or violence.

The Facts.

As stated, the petitioner came to this country at the age of three. The petitioner's father was a garment worker and the family lived under poverty-stricken circumstances. He had to go to work as a newsboy at the age of 12 and it was during that period that he began to question the principles and customs which permitted such a contrast between wealth and poverty (R. 357). During all the time prior to his becoming a citizen he was working his way through school (R. 358). In 1922 the petitioner, then sixteen years of age, was a student in the Polytechnic Night School at Los Angeles (R. 86, 87, 357). He became one of the organizers of the Young Workers' League of California and an educational director thereof, with the duties of organizing classes for the purpose of studying the theory of Marxism and the political and economic conditions in the countries, but he did no teaching, his duties being to merely register students and send out notices of meetings (R. 87, 359). The classes were open to anybody who desired to attend (R. 87). The name of this organization was later changed to the

Young Communists' League (R. 90). The Young Workers' League, in teaching the philosophy of the League, used the generally accepted writings of Marx and Lenin (R. 88, 89). During this period, the petitioner merely considered himself a student of the subject of Marxism and Leninism, just as he had studied philosophy or sociology at college (R. 359). His job as the secretary of the local Party organization as a boy was merely that of a corresponding secretary; he was not an officer (R. 358, 359). At no time prior to his citizenship, had he ever been arrested for any reason, and he had behaved as should a citizen of the United States (R. 360). In 1924 or 1925 the petitioner became a member of the so-called Workers' Party, which later on changed its name to the Workers' Communist Party and then to the Communist Party of America (R. 91), by which name the Party is known at present (R. 92). During all this time the petitioner has generally subscribed to the principles of that Party *which he interpreted to be the same as those enunciated in the Constitution of the Party* (R. 92, 365, 84, 14-30).

Many excerpts from pamphlets and books were introduced by both the government and the petitioner to define the principles of Communism. As stated by the Circuit Court of Appeals in its opinion, these excerpts showed that there was a great deal of conflict among writers as to these principles, particularly on the question as to the advocacy of the use of force and violence to overthrow a government (R. 917).

But prior to the adoption of the constitution and by-laws of the Communist Party of America in 1938 there had been no official party expression, in the way of a platform or otherwise, of the principles of the Communist Party of America (R. 364, 365).

The government called only three witnesses, Humphreys, a former member of the Communist Party of America (R. 181, 184), who testified that "as far as the application of force and violence was concerned, the Communist Party took the defensive and put the first users of force upon the capitalist government" (R. 200); Hynes, a police officer, who identified a good deal of communist literature and gave it as his opinion that the method of the Communist Party "of bringing about a change of the form of government is one of force and violence" (R. 330), and the petitioner, who frankly stated just what he believed and emphatically denied that he had ever believed in the overthrow of the Government of the United States by force and violence.

The petitioner introduced the testimony of Professor Brown (R. 477) and of Professor Thompson (R. 695), both of Stanford University (R. 480, 697), given in another proceeding. They discussed the Marxian philosophy as evidenced by the writings of Marx, Engels and Lenin with the conclusion that it did not involve the use of force and violence as a method of attaining its objective (R. 544, 562, 618, 685, 736, 755, 757, 762-763).

The conclusions of the lower courts were plainly deduced from Communist writings, admittedly conflicting on the subject of the use of force and violence.

The Applicable Statutory Law.

The recent case of *Kessler* vs. *Strecker*, decided by this Court in April, 1939 (307 U. S. 22), demonstrates how carefully and strictly the statutes with respect to the admission, deportation and naturalization of aliens must be construed and applied. In the light of this case, it is worth while

to analyze carefully the sections of the statutes dealing with *naturalization* as they stood on the date of Schneiderman's admission to citizenship (see pp. 18-21 *infra*). Act of June 29, 1906, Chap. 3592, Sec. 4, 34 Stat. 596, required a petition of the applicant, and provided in part as follows:

> "Second. * * * The petition shall set forth that he is not a disbeliever in or opposed to organized government, or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government, a polygamist or believer in the practice of polygamy, and that it is his intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he at the time of filing of his petition may be a citizen or subject, and that it is his intention to reside permanently within the United States * * *.
>
> The petition shall also be verified by the affidavits of at least two credible witnesses, who are citizens of the United States, and who shall state in their affidavits that they have personally known the applicant to be a resident [for the requisite number of years] * * * and that they each have personal knowledge that the petitioner is a person of good moral character, and that he is in every way qualified, in their opinion, to be admitted as a citizen of the United States."

Said section 4 as it stood at the time of Schneiderman's naturalization, further provided:

> "Third. He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all

allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.

Fourth. It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record."

Act of June 29, 1906, Chap. 3592, Sec. 15, (8 U. S. C., Sec. 405), under which this proceeding was brought, states, among other things, that:

"It shall be the duty of the United States district attorneys for the respective districts * * * to institute proceedings in any court having jurisdiction to naturalize aliens * * * for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured."

The statutes governing *deportation*, as they stood in 1927 and as they stand today, are set forth in the appendix hereto.

Analysis of Opinions of the District Court and of the Circuit Court of Appeals.

District Court Opinion. The District Court held that:

> "The conclusion which this Court reaches * * * is that the organizations to which defendant belonged were opposed to the principles of the Constitution and advised, taught and advocated the overthrow of the government by force and violence, and that defendant, by reason of his membership in such organizations and participation in their activities, was not 'attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.' In *re* Saralieff, above. Therefore, defendant obtained his certificate of citizenship illegally" (R. 44, 45).

It will thus be seen that the District Court, in its opinion, based its decision of "illegality", on its holding that membership in the Communist Party of America precluded *attachment* to the Constitution.

District Court Findings. The gist of finding number IV was that the certificate of naturalization was "illegally procured" because the respondent "was not * * * and * * * had not behaved as a person attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same but was a member of * * * the Communist Party of the United States of America * * *" (R. 48, 49).

In Finding number VI, the District Court held that the certificate of naturalization was "fraudulently procured" in that "said respondent concealed from the naturalization court the fact that he was affiliated with the Communist Party and supported the principles thereof" (R. 50).

In Finding number VII, the District Court found that the certificate of naturalization was "illegally and fraudulently procured in that when the respondent took the oath to support the Constitution of the United States and to abjure allegiance to any foreign prince", he did not "intend to support the Constitution" and did not "intend absolutely and entirely to renounce" allegiance to any foreign prince (R. 51, 52).

Opinion of Circuit Court of Appeals. The Circuit Court of Appeals in its opinion refused to consider the charge of "fraud". The Circuit Court of Appeals considered only whether or not there was sufficient evidence to sustain the findings of the District Court that the certificate was procured "illegally". On this point it said (R. 912):

> "Appellant makes considerable argument to the effect that there was no proof of fraud. It is unnecessary to consider this contention. Cancellation of the certificate of naturalization is authorized by §405 on the ground of illegality."

The illegality to which the Circuit Court of Appeals gave attention was illegality asserted to arise from a false oath:—the oath (a) to support the Constitution, and (b) to renounce allegiance to foreign states. The Circuit Court of Appeals held that if the oath is falsely made, then the declarant "obtains his citizenship illegally" (R. 913). The Circuit Court pointed out that the District Court had found that the oath was falsely made in both aspects,

leading the Circuit Court of Appeals to define the question before it in the following language:

> "Thus we arrive at the narrow question: Are such findings clearly erroneous." (R. 915)

By following the same process pursued by the District Court, to wit, by ascribing to Schneiderman, *merely because of his membership and general activity in the Communist Party of America,* a belief in principles which the Court held to be contrary to the "views of" the Constitution, the Circuit Court of Appeals held that there was evidence to sustain the findings of the District Court so that the findings could not be pronounced "clearly erroneous."

The substance of the decisions of the lower courts is this: That upon proof of the fact that a man is an active member of the Communist Party of America, and upon further proof of what various people have written respecting the Communist Party, especially what Marx wrote in 1848—yes, 1848—with reference to conditions in Europe at that date, it is established that such Communist Party member *ipso facto* and as a matter of law is not attached to the Constitution of the United States, does not intend to support and defend the Constitution, no matter how many oaths he may take, and in fact advocates the overthrow of the Government of the United States by force, no matter how much he may swear that he does not believe in or advocate such conduct and no matter how well-behaved he may have been as a citizen or resident of this country. In reaching these conclusions, the lower courts both brushed aside as of no consequence:

1. The respondent's own testimony as to what in fact were his beliefs with respect to what the courts deemed to be crucial questions, such as the fact that he did not

believe in or advocate the use of force and violence to overthrow the Government of the United States (R. 360, 361).

2. The fact that there was no proof that the respondent personally had believed, advocated or taught many of the condemned doctrines, the proof being in fact directly to the contrary (R. 360, 361, 362 and 363).

3. The fact that so far as the proof was concerned the conduct of the respondent as a citizen had always been exemplary. He had always *behaved* as a man of good moral character, "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same" (unless the mere fact of party membership and participation in its political activities is to be deemed a contradiction thereof) (R. 360, 362, 363).

4. That prior to 1938 there had been no formulation of a platform for the Communist Party of America (R. 364, 365), and that when a platform was finally adopted in 1938, it did not advocate any of the condemned doctrines (R. 14-38), and finally

5. That there were sharply conflicting views in the various writings introduced in evidence and in the testimony of the government's witnesses both as to party doctrines and as to methods of accomplishing party aims (See opinion of Circuit Court of Appeals, R. 917). The lower courts, for the purposes of their decisions, out of this conflict of views, adopted as authoritative and imputed to the petitioner, in numerous instances in direct contradiction of his unimpeached testimony, only those expressions of aims and doctrines which they found to be obnoxious.

Specification of Assigned Errors to be Urged.

1. The decision of the court below is erroneous because in effect it amounts to the setting of standards for citizenship by the court instead of by Congress; and it actually establishes a rule of naturalization which Congress has deliberately failed to enact and thus the lower court has acted beyond the scope of its powers.

2. The court below erred in holding that the belief in or advocacy of certain views by petitioner, to be accomplished by the peaceful method of amendment to the Constitution, precluded his attachment to the principles of the Constitution, and precluded his taking truthfully an oath to support and defend the Constitution.

3. The court below erred in holding that the petitioner made a false oath to support and defend the Constitution, based on the claim that he advocated the overthrow of the government of the United States by force and violence, and on that basis setting aside the decree of the naturalization court and depriving him of his citizenship, without the support of direct and substantial proof that he did so believe and advocate. There is no proof of such belief or advocacy on petitioner's part.

Summary of Argument.

1. Congress can alone make active membership in the Communist Party of America a bar to naturalization. It has not done so.

Though the petitioner complied with the requirements of the naturalization statutes in effect in 1927, the date of his naturalization, the lower court has created, *ex post facto*,

a new qualification not prescribed by Congress, namely, that active membership in the Communist Party of America *ipso facto* disqualifies an applicant from naturalization and in 1940 and 1941 applied this *ex post facto* qualification to Schneiderman's naturalization in 1927. Congress alone has the power to specify the prerequisites of naturalization and to date has not specified active membership in the Communist Party or belief in the principles thereof as enunciated in its constitution as a ground for denial of citizenship. Hence the court below has exceeded its power and therefore erred in cancelling petitioner Schneiderman's citizenship.

2. The belief in or advocacy of changes in the Constitution, even involving fundamental, social and economic changes, but by the method of amendment prescribed in the Constitution, does not preclude either a citizen or an applicant for citizenship from truthfully taking an oath to support the Constitution.

An applicant for citizenship, as well as every citizen, whether native born or naturalized, has the fullest right to advocate the views asserted by the court below to be communistic and "not those of our Constitution," and to seek to have them embodied in the Constitution through the peaceful method of amendment.

The Constitution itself provides for change and there have been many amendments thereto, some of which are radical departures from the principles believed by the founders to be fundamental to our form of government. Free institutions can only be preserved by free expression of the popular will, and an oath to support the Constitution and the laws of the United States imports no more than a willing obedience to them while in force. Advocacy of change therein in a lawful manner does not import lack of

attachment to the Constitution, nor does it mean that the applicant swears falsely when he takes an oath to support and defend the Constitution. Further, the evidence does not show that the petitioner Schneiderman personally believed in many of the views which the court below held to be obnoxious to our Constitution. In any event, the petitioner, Schneiderman, desired to accomplish those social and economic changes which he advocated only through peaceful constitutional means without resort to force or violence (R. 897, 898).

3. The decision of the lower court constitutes a drastic abridgement of freedom of political belief and thought, of free speech and freedom of the press.

The principal objective of the first amendment to the Constitution is to insure freedom of opinion as to the form of government, political principles and measures and freedom of speech and publication with respect thereto. When the lower court decided that certain alleged communistic doctrines were not harmonious with the Constitution, it, at the same time, struck at one of the most fundamental rights guaranteed by the Constitution, namely, the right to freely criticize it and every principle therein and advocate change, however fundamental, by amendment. An alien applicant for citizenship while in this country enjoys the same protection given by the Constitution to a native born citizen, so far as civil liberties are concerned, and is entitled to the same freedom of expression and advocacy as such native born citizen.

4. The decree of the naturalization court cannot be set aside and a naturalized citizen be subjected years after naturalization to such drastic action as the deprivation of his citizenship on the basis of a charge that he made a

false oath to support the Constitution because of a claim that he believed in and advocated the overthrow of the Government by force, except upon direct and substantial proof that he did so believe and advocate. There is no proof of such belief or advocacy on petitioner's part.

Thirteen years after granting citizenship to the petitioner the courts below have in effect set aside the decree of the naturalization court and deprived the petitioner of his citizenship on the ground that his oath to support the Constitution was false because he believed in and advocated the overthrow of the Government by force. In reaching such conclusion as to belief and advocacy, the decisions below are based solely upon a series of arbitrary imputations of belief, starting with conflicting views of foreign writers purporting to discuss the topic of communism, and they completely disregard the petitioner's clear, unimpeached and explicit testimony that he never believed in or advocated the use of force. To convict a man of a false oath and thus deprive him of his citizenship held for many years there should be at least some very direct and substantial proof of falsity. Here there is no direct proof whatsoever. The arbitrary imputation of belief indulged in by the lower courts in order to reach the ultimate conclusion that the petitioner had sworn falsely is in every respect contrary to our concepts of freedom of thought and impartial justice and cannot, as a matter of law, be the basis of a charge of fraud or illegality justifying cancellation of citizenship and, in effect, the setting aside of the decree of the naturalization court, a court of competent jurisdiction.

POINT I.

Congress alone can make active membership in the Communist Party of America a bar to naturalization. It has not done so.

With respect to the qualification of an alien for naturalization, it will be seen that the statutes (*supra*, pp. 8 and 9) set up three tests; one, retrospective (to wit: residence and past behavior), two, a statement of present beliefs and present party affiliations; and three, prospective, an oath to support the Constitution.

One. Retrospectively, the statute requires a certain amount of residence, proof that applicant was not a polygamist and proof to the satisfaction of the court that during the requisite residential period the applicant "has *behaved* as a man of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same." It will be seen that importance is attached retrospectively to *behavior*, and, in general, it may be said that the behavior required was the type of behavior expected of a good native-born citizen.

The statute was explicit as to how the fact of past residence and past behavior were to be established. It provided that:

> "In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character (etc.), * * * shall be set forth in the record."

The petitioner, unquestionably, provided the required oath and the other proof.

Now, it is clear that, so far as his past was considered, the young man Schneiderman, twenty-one years old in 1927, had in fact behaved, during his boyhood, like a citizen of good moral character, attached to the Constitution and well disposed to good order of the same. He had graduated from night school and went for about two-and-a-half years to the University of California at Los Angeles (R. 357). He had never been arrested nor censured by any law enforcement agency and had, at all times, deported himself as should a citizen of the United States (R. 360). He was working his way through school (R. 358). It is true he joined the Young Workers League for the purpose of investigating and studying what the principles of Communism had to say about the conditions of society as he saw them:

> "• • • between the age of 16 and 21, I considered that my membership and activities in the Young Workers League and in the Party were only in an attempt to investigate and study the causes and reasons behind the social and economic conditions under which I lived and as I saw them" (R. 357).

Can anyone say that this was not the reasonable conduct of a mentally alert boy, who lived in poverty-stricken circumstances? (R. 357). So much for the retrospective requirements for naturalization. We do not believe that it can be said with justice that the respondent had not complied with them in spirit and reality as well as in form.

Two. In addition to past behavior, the applicant had to show by his own petition what certain of his present beliefs were and what were his present party affiliations with respect thereto. His petition, as above shown (Act of June 29, 1906, Chap. 3592, Sec. 4, 34 Stat. 596), had to set forth that he was not a disbeliever in or opposed to organ-

ized government or a member of or affiliated with any organization teaching disbelief in or opposed to organized government, and that he was not a believer in polygamy. This is all that the statute required in the way of a statement of beliefs and party affiliations.

The applicant's petition, which was in the statutory form (R. 74-78), complied with the requirements as to the statements of his beliefs and affiliations. It stated that he was not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government and he was not a polygamist or a believer in the practice of polygamy. *The government does not contend that the petition of Schneiderman, required by Section 4, was in any way false in these particulars.*

It is true that the District Court found:

> "That it is not true that at the time of the filing of his petition for naturalization respondent was not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government" (Finding IV, R. 48).

The Government does not contend that there is any evidence to support that finding. It is not disputed that members of the Communist Party, generally speaking, believed in some form of organized government (R. 330, 331, 363 and 863). There is certainly an organized government in Russia. The petitioner, Schneiderman, testified not only that he believed in organized government, but that he specifically believed in the government of the United States (R. 362, 363, 377, 896 and 897).

Three. The other requirements of the naturalization statutes are prospective and they all have to do with an

oath. The oath is largely the applicant's declaration of his intentions for the future. Under the requirements of the Act of June 29, 1906, Chap. 3592, Sec. 4, 34 Stat. 596, by an oath made in open court, he has to declare that he "*will*" support the Constitution of the United States and that he absolutely renounces allegiance to any foreign prince or state, and that he "*will*" support and defend the Constitution and laws of the United States against all enemies. The provisions of Section 4 as to the application supplemented those as to the oath, by requiring that the petition which the applicant should sign should state his intentions as follows: "That it is his intention to become a citizen of the United States and to renounce" allegiance to any foreign state, and particularly by name, the state of which he at the time of signing his petition may be a subject, and it is his intention to reside permanently within the United States.

The Circuit Court of Appeals was apparently unwilling to follow the District Court and place the decision of illegality on the ground that Schneiderman's past behavior, prior to his naturalization date, was not the required behavior. Consequently, the Circuit Court of Appeals found illegality in a false oath as to Schneiderman's intentions for the future.

Except for his membership in the Communist Party of America and except for his general adherence to the principles of the Communist Party of America as finally embodied in its constitution (R. 365), it is not claimed that when the petitioner Schneiderman, at the age of twenty-one, took this oath, he did not in good faith intend to support the Constitution and did not in good faith repudiate all foreign allegiance. His entire conduct both before his naturalization at the age of twenty-one and since, has been in full

consonance with his oath. The Government's only contention to the contrary is the mere fact of membership in the Communist Party!

The effect of the decisions of the lower courts in this case is to establish an irrebuttable presumption that a member of a political party, to which party a court has imputed views which that court conceives to be obnoxious to the Constitution, merely by reason of such membership, cannot truthfully take an oath to support the Constitution and therefore cannot become a naturalized citizen.

In essence, the lower court decisions add another qualification requirement for naturalization to those specified in the Act of June 29, 1906, Chap. 3592, Sec. 4, 34 Stat. 596. And further, they add this additional qualification in the years 1940 and 1941 and then apply it *ex post facto* to the application made by Schneiderman in 1927!

The Circuit Court of Appeals held that certain alleged Communistic views, which it catalogued, "are not those of our Constitution" (R. 916), and that consequently one who held these views (even though they were merely ascribed to him by virtue of party membership) was disqualified for naturalization. As we have seen, Congress expressly dealt with the subject of beliefs and the subject of party affiliations as affecting qualification for naturalization. In the realm of advocacy or adherence to principles, Congress prescribed merely that a man should show that he did not disbelieve in organized government, and that he did not believe in polygamy. In the realm of party affiliation, Congress merely prescribed that a man should not be affiliated with a party which disbelieved in or opposed organized government. The decision of the lower courts in this case is equivalent to adding another specification of beliefs and party affiliation, to wit, that the applicant by his petition must

also show that he is not a believer in the views catalogued by the Circuit Court of Appeals in this case as Communistic and pronounced obnoxious (R. 916), and that he is not affiliated with any organization teaching belief in those views.

Such sweeping proscription of membership in a political party as applied to aliens seeking naturalization can not, we submit, come from the courts, but must come from Congress. Congress *alone* has the power to specify the prerequisites of naturalization. Even if, for argument's sake, we assume that Congress would have the power to say that no alien who is a member of the Communist Party should be admitted to citizenship, it is clear that Congress, to date, has not gone that far.

In dealing with *deportations*, Congress has specified with particularity those doctrines the advocacy of which shall so disqualify an alien as to make him the subject of deportation. It is noteworthy that both as the law stood in 1927 and as the law stands today (Act of February 5, 1917, Chap. 29, Sec. 19, as amended, 8 U. S. C. Sec. 155, Act of October 16, 1918, Chap. 186, Secs. 1 and 2, as amended, 8 U. S. C. Sec. 137 (a)-(g)), as pertinent to our present discussion, the only disqualifications justifying *deportation* of an alien were disqualifications having to do with violence, to wit, advocating the unlawful destruction of property or anarchy or the overthrow of the Government by force or violence, or of all forms of law, or the assassination of public officials. Notwithstanding the cases in the lower courts dealing with the deportation of alien Communists which have arisen in the last few years, the Congress, in its amendments to said Sections above mentioned, passed on June 28, 1940 (Act of June 28, 1940, Chap. 439, Secs. 20 and 23, 54 Stat. 671, 673), still limited deportation for political offenses to advocacy of the acts of violence above specified,

and in no way made belief in the general principles of Communism, as such, a ground for deportation.

The specifications of qualifications for *naturalization*, the lack of which would preclude admission to citizenship, were, as we have seen from the statutes quoted above, much less stringent than those affecting deportation. They obviously did not specify a disbelief in Communism.

By the Act of June 29, 1938, Chap. 819, 52 Stat. 1247, Congress very materially amended and enlarged the provisions of Section 4 of the Act of June 29, 1906, Chap. 3592 (8 U. S. C. Sec. 382), dealing with the prerequisites of admission to citizenship, and by the Act of June 20, 1939, Chap. 224, Sec. 3, 53 Stat. 844, Congress amended said Section 4 (8 U. S. C. Sec. 381) with respect to the oath to support the Constitution. Yet, notwithstanding all of the widespread agitation in the country against Communism and notwithstanding the cases that had arisen in the courts with respect to the deportation of aliens for Communistic views, Congress did not alter the character of the oath required to be taken as to supporting the Constitution, nor did it alter in any substantial particular the provisions of Section 4 (8 U. S. C. Sec. 382) as it theretofore stood with respect to the previous behaviour of the applicant as a person of good moral character attached to the principles of the Constitution.

In fact, as we have stated above (page 4), Congress has refused so to do on earlier occasions.

Kessler vs. *Strecker*, 307 U. S. 22 (1939), makes it clear that in dealing with the naturalization statute the Courts must adhere strictly to the express specifications laid down by Congress with respect to the qualifications for naturalization. It is not for the courts to enlarge the requirements.

POINT II.

The belief in or advocacy of changes in the Constitution, even involving fundamental, social and economic changes, but by the method of amendment prescribed in the Constitution, does not preclude either a citizen or an applicant for citizenship from truthfully taking an oath to support the Constitution.

The Circuit Court of Appeals catalogued (R. 916) seven specific views asserted to be Communistic views, which it held to be "not those of our Constitution", and consequently that no one who held and advocated these views and sought (even by the peaceful method of amendment to the Constitution) to put them into effect, could truthfully take an oath to defend the Constitution.

We submit that however radical some of the alleged views may seem to be, every citizen, whether native-born or naturalized, has the fullest right to advocate these views and to seek to have them embodied in the Constitution through the peaceful method of amendment. The Circuit Court of Appeals in this case did not suggest that there was any difference in the rights of an applicant for citizenship and a native-born citizen to advocate the views in question. There seems, however, to have been a suggestion in another case that while citizens may freely advocate constitutional changes, applicants for citizenship may not do so, *U. S. v. Tapolcsanyi*, 40 F. (2d) 255 (C. C. A. 3rd, 1930), *infra*, p. 29.

There is no basis for that distinction. The Congress has never prescribed it.

The Constitution itself provides for change and there have been twenty-one amendments, some of them radical departures from principles believed by the founders to be

fundamental to our form of government. Many thought that the 18th Amendment violated fundamental provisions of the Constitution. But the view that it was a compact unalterable in fundamentals was rejected by this Court, which held that the Constitution could be changed in any respect at the will of the people expressed in the manner provided by the Constitution. *National Prohibition Cases*, 253 U. S. 350 (1920).

Free institutions can only be preserved by the free expression of the popular will. They will perish from totalitarian methods. Their danger lies in repression and in insidious and unseen attacks rather than in open advocacy of change by constitutional methods.

An oath to support the Constitution and the laws imports no more than a willing obedience to them while in force. Advocacy of change in a lawful manner does not import lack of attachment to the Constitution nor ill disposition to the good order and happiness of the United States nor mean that the applicant swears falsely when he swears to support and defend the Constitution.

As to several of these views which the Circuit Court of Appeals held to be obnoxious, there was no proof that they were the personal views of Schneiderman, as, for example, the alleged Communistic view that the present government here should be abandoned and one like that of the Soviet Union established; or the alleged Communistic view that the Supreme Court and Senate should be abolished; or the alleged Communistic view that the government should be controlled by one political party; or the alleged Communistic view that the various countries of the world should establish a world union of Soviet Socialist Republics. In fact, with respect to the claim that the Communist Party advocated that the agents of production should be confis-

cated without compensation, he asserted that the Party was only preaching in the United States the nationalization of certain private industries "with compensation" (R. 877, 878).

POINT III.

The decision of the lower court constitutes a drastic abridgement of freedom of political belief and thought, of free speech and of the freedom of the press.

The great vice of the opinion of the Circuit Court of Appeals with respect to the entire catalogue of views pronounced to be obnoxious is that it constitutes a wholly unwarranted and unnecessary restriction upon freedom of political belief and thought, freedom of speech and freedom of the press. The main objective which the people of the United States had in mind in adopting the First Amendment was to insure freedom of opinion as to the form of government and political principles and measures, and freedom of speech and freedom of publication with respect thereto. Freedom of speech and of the press in political discussion was the main freedom our forefathers sought to insure by this amendment. Save as their speech, and their publications might constitute treason or libel or incite to crime, one of the dominant ideas upon which the American people were insistent in the formulation of their Constitution was that the citizens should have the right to speak freely and to publish freely any and all views that they might have respecting the form of government and the nature of their political and economic rights. *Whitney* v. *California*, 274 U. S. 357 (1927); *Lovell* v. *Griffin*, 303 U. S. 444 (1938); *Stromberg* v. *California*, 283 U. S. 359 (1931).

Consequently, the decisions of the lower courts in this case strike at the very heart of one of the most basic doctrines of the Constitution. While the lower courts were deciding that certain alleged Communistic doctrines are not harmonious with the views of the Constitution, they overlooked the fact that they were at the same time impairing one of the most fundamental rights guaranteed by the Constitution, to wit, the right to criticize freely the Constitution and every principle therein and to advocate a change thereof.

And for the exercise of this right, the Constitution itself provides the most ample means. It provides that, except in certain particulars only, the Constitution may be freely amended. The right of amendment freely invites whatever alteration the citizens of the country may see fit to make in the course of time as the passing years give them a different understanding of the functions of Government and of the best form under which those functions can be executed.

Beyond question, within the doctrine announced by this Court in the recent case of *Bridges* vs. *State of California*, U. S. Sup. Ct., Bulletin 235 (1941), no citizen can be deprived of the right to believe and advocate any and all of the various views which the Circuit Court of Appeals herein condemned as contrary to the views of the Constitution.

With reference to the breadth and scope of the personal liberties protected by the First Amendment to the Constitution, this Court, in the *Bridges* case said, at page 240:

> "* * * On the contrary, the only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give to liberty of the press, as to the other liberties, the broadest scope that could be countenanced in an orderly society."

It may be urged that while a native-born citizen is guaranteed that freedom of speech and of the press which would allow him to express his opinions freely with respect to the views pronounced obnoxious by the Circuit Court of Appeals, no such right exists in an alien about to be naturalized. (*See U. S.* v. *Tapolcsanyi*, 40 Fed. (2d) 255 (C. C. A. 3rd, 1930).) Even if we should admit, merely for the purposes of argument, that Congress has the power to restrict as freely as it sees fit the freedom of speech of aliens and to deny naturalization to an alien who has given expression to views which a native-born citizen could express with propriety, it is enough to say that, so far, Congress has not, in its control of naturalization, imposed any such restrictions. The prohibition of the First Amendment is sweeping and categorical ("Congress shall make *no* laws, etc. * * *"). This, in terms at least, would apply to a naturalization law. *See Bridges* v. *State of California, supra.* We submit that it would be an astounding doctrine to deny to an alien admitted to our shores and about to become a citizen that freedom of speech which a native born citizen enjoys.

The authorities are to the effect that an alien who is properly in this country enjoys, while here, the protection given by the Constitution to a native born citizen, so far as civil liberties are concerned. The case of *Bridges* vs. *State of California, supra*, had to do, among other things, with the freedom of speech that would be accorded to Bridges. Although the case did not turn upon the fact that Bridges was a resident alien, nevertheless, in view of the notoriety of this man, that fact must have been known to the entire Court. It apparently had no bearing in the mind of the Court upon the application of the First Amendment to Bridges' conduct. See also *Wong Wing* vs. *U. S.*, 163 U. S.

228 (1896); *Truax* v. *Raich*, 239 U. S. 33 (1915); *Powe* v. *United States*, 109 Fed. (2nd) 147 (C. C. A. 5th 1940) cert. den. 309 U. S. 679 (1940); *United States* v. *Parson*, 22 Fed. Supp. 149 (D. C. S. D. Calif. 1938) rev. on other grounds *sub nom. Graham* v. *United States*, 99 Fed. (2) 746 (C. C. A. 9th 1938).

In the *Tapolcsanyi* case, *supra*, the Circuit Court of Appeals said (40 Fed. (2d) 255, at 257):

> "While no one may be deeply attached to every provision of the Constitution and while all citizens have a right to work for its amendment in an orderly way, that is the right of a citizen. The respondent approached that right not as a citizen but as an alien. As an alien he had no such right."

While it may well be that, strictly speaking, an alien has no "right" to advocate amendments to the Constitution, certainly in the absence of express prohibition by Congress there can be no wrong committed by him in advocating an amendment (see cases cited above). Nor can such advocacy properly be deemed proof of lack of attachment to the principles of the Constitution, unless it similarly constitutes proof against a citizen of such lack of attachment. Suppose, for example, that an alien about to be naturalized expressed the view that the Constitution should be amended so as to abolish the Electoral College. Is that fact sufficient to deprive him of his right to become a citizen merely on the claim that he thereby shows lack of attachment to the principles of the Constitution? We submit that there can be no force in any suggestion that under the present law an alien about to be naturalized has not the same freedom of thought, speech and of the press as a native-born citizen. It follows that even if Schneiderman, at the age of 21, held and advocated all of the views pronounced by the Circuit Court of Appeals to be obnoxious (which is contrary to the evidence),

he had a perfect right to do so and could not be denied naturalization on account thereof, much less have his naturalization cancelled therefor thirteen years after the event.

POINT IV.

The decree of the naturalization court cannot be set aside and a naturalized citizen be subjected years after naturalization to such drastic action as the deprivation of his citizenship on the basis of a charge that he made a false oath to support the Constitution because of a claim that he believed in and advocated the overthrow of the Government by force, except upon direct and substantial proof that he did so believe and advocate. There is no proof of such belief or advocacy on petitioner's part.

The District Court found that when petitioner, then aged 21, took the oath, he believed in and advocated the overthrow of the government of the United States by force —notwithstanding his clear and explicit testimony that neither the party nor he ever so believed or so advocated, notwithstanding that there was no proof of his personally having advocated such action and notwithstanding his good behavior as a citizen since naturalization. The District Court's finding was based upon picking out of the conflict of views, as expressed in the mere writings of Communists, those writings in which the use of violence was advocated, then imputing that particular set of views to the Third International, and then imputing the views thus attributed to the Third International to the Communist Party of America (although it was admitted by the government that the constitution of the Communist Party of America did not advocate force and violence) and then imputing such views to the petitioner, merely because he was a member of the

Communist Party of America and its predecessor, and by such process giving the lie to his own direct testimony and the proof of his conduct.

It was on this flimsy foundation that the courts below, thirteen years after the event, in effect set aside the decree of the naturalization court, by concluding that Schneiderman took a false oath to support the Constitution.

False, perjured swearing and consequent "illegality" in obtaining the certificate of naturalization surely cannot be established by any such a manufactured process. There should be at least some very direct and substantial proof in order to convict a man of a false oath and thus to deprive him of a citizenship which he has held for many years. We submit that in this case not only is there no such substantial proof, there is no direct proof whatsover. As against the direct and unimpeached testimony of the petitioner and the very substantial proof of his beliefs afforded by his conduct, the existence of a false oath is premised by the lower courts upon nothing more than a barefaced chain of imputations, starting with the conflicting views of foreign writers. Certainly, this chain of imputations affords no basis for brushing aside petitioner's own testimony and the proof given by his conduct, and thereby convicting him of having made a false oath, and on the basis of falsity established in this peculiar manner, setting aside the decree of a competent court.

It is clearly unsound to impute to a party all the views of party members expressed in their writings or speeches, no matter how high their rank in the party, and it is doubly unsound to impute to each and every member of the party the views thus imputed to the party. Democrats and Republicans, high in party circles, differ constantly in their interpretation of the fundamental principles of their respective parties, as their writings, speeches and votes in Congress clearly indicate, and frequently persons high in the party

avowedly do not adhere to all of the pronounced principles of their party.

In effect, the lower courts have said that the evidence introduced as to what third parties advocated in their writings is so conflicting that the petitioner is guilty. Would it not have been more reasonable and certainly more in accord with our laws' basic assumption of a man's innocence to have said that the evidence introduced is so conflicting that the petitioner is *not* guilty.

There was absolutely no testimony in any way directly connecting the petitioner Schneiderman personally with any belief in or advocacy of the use of force or violence to overthrow the government of the United States. The only testimony dealing with his personal views and personal conduct was his own testimony. He gave unimpeached testimony that at no time prior to naturalization did he ever believe, teach or advocate the use of force and violence (R. 360-362, 342-343) and that his attitude at all times since has been the same (R. 897-898). Certain of his testimony dealing with this particular question is so pertinent as to warrant its being set forth here at some length (R. 373):

> "We deny that the enunciation of our principles constitute the advocacy of the overthrow of the government by force and violence or the use of force and violence. The Communists do not desire the use of force and violence. We desire and strive for peaceful and democratic means for removing exploitation and oppression."

Again:

> "Those who accuse the Communist Party of advocating the overthrow of the government by force and violence often take quotations out of the context of these polemical writings without regard to the rest of the context or to the intent of the authors to defend certain theoretical conclusions" (R. 376).

Further, the petitioner testified, without contradiction, that at all times he subscribed to the principles of the Party as enunciated in its constitution (R. 92, 365, 14-30), and with reference to such constitution, in its brief in opposition to the petition for a Writ of Certiorari herein, the Government conceded (pp. 6 and 7):

> "Petitioner, on the other hand, testified that the Constitution and By-Laws of the American Communist Party, adopted in 1938, was the only official expression of the principles of the Communist Party (R. 364), that it overrode any conflicting statement (R. 365-368, 834-839, 856-861), *and that it represented the views which he personally had always maintained* (R. 365). *This constitution of the Party* (R. 14-38) *contains nothing inconsistent with a peaceful accomplishment of the Party objectives and states the Party's defense of the United States Constitution against its reactionary enemies* (R. 14). Petitioner's evidence is to the effect that force and violence has not been advocated by the Party (R. 375-376, 461-466) but that it predicted its use by the forces of capitalism against the workers, to prevent their obtaining control of the Government, and that the Party intended its use only in defense of the popular Government (R. 401-426, 592, 679-688, 755-757). * * *" (Italics ours.)

Thus, the Government admits that the Party constitution does not advocate force or violence and states the Party's defense of our Constitution, while the petitioner's *unimpeached* testimony shows that said constitution represented the views he had *always* maintained. No further proof seems necessary to establish that he *never* believed in or advocated the overthrow of our Constitution or Government by force or violence.

The Circuit Court of Appeals found the proof so conflicting as to the advocacy of force that the most it could

declare in its opinion was that they were "unable to say that the finding of the trial court was * * * clearly erroneous" (R. 917).

To set aside the decree of the naturalization court and to deprive Schneiderman of his citizenship on the basis of views thus imputed to him, then a young man, of twenty-one, out of the conflicting writings largely of foreigners dealing with foreign conditions, is a monstrous injustice. If Schneiderman can be deprived of his citizenship on the basis of these imputed views, the citizenship of every naturalized citizen in the United States is in danger. The arbitrary imputation of belief indulged in by the lower courts, in order to reach the ultimate conclusion that the petitioner had falsely sworn, is in every respect contrary to the fundamental concepts of freedom of thought and impartial justice, upon which the very basis of our Constitutional democratic form of government rests. Such arbitrary imputation cannot, as a matter of law, be the basis of a charge of fraud or illegality justifying cancellation of citizenship.

Conclusion.

The decree of the Circuit Court of Appeals should be reversed.

Respectfully submitted,

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Appendix.

Statutes Governing Deportation as They Stood in 1927.

Act of 1918 as Amended in 1920.

That the following aliens shall be excluded from admission into the United States:

(a) Aliens who are anarchists;

(b) Aliens who advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that advises, advocates, or teaches, opposition to all organized government;

(c) Aliens who believe in, advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage;

(d) Aliens who write, publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, distribution, publication, or display, any written or printed matter, advising, advocating, or teaching, opposition to all organized government, or advising, advocating or teaching: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of

officers generally) of the Government of the United States or of any other organized government, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage;

(e) Aliens who are members of or affiliated with any organization, association, society, or group, that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subdivision (d).

For the purpose of this section: (1) the giving, loaning or promising of money or anything of value to be used for the advising, advocacy, or teaching of any doctrine above enumerated shall constitute the advising, advocacy, or teaching of such doctrine; and (2) the giving, loaning or promising of money or anything of value to any organization, association, society, or group, of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching, or affiliation.

(Act of October 16, 1918, C. 186, Sec. 1, 40 Stat. 1012, as amended by Act of June 5, 1920, C. 251, 41 Stat. 1008.)

Sec. 2. That any alien who, at any time after entering the United States, is found to have been at the time of entry, or to have become thereafter, a member of any one of the classes of aliens enumerated in section one of this Act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in the immigration Act of February fifth, nineteen hundred and seventeen. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act irrespective of the time of their entry into the United States.

(Act of October 16, 1918, C. 186, Sec. 2, 40 Stat. 1012.)

Act of 1917.

SEC. 19. That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or impor-

tation for prostitution or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: *Provided*, That the marriage to an American citizen of a female of the sexually immoral classes the exclusion or deportation of which is prescribed by this Act shall not invest such female with United States citizenship if the marriage of such alien female shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this Act: *Provided further*, That the provisions of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further*, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further*, That the provisions of this section shall also apply to the cases of

aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further*, That any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Secretary of Labor shall be final.

(Act of February 5, 1917, C. 29, Sec. 19, 39 Stat. 889.)

Statutes Governing Deportation as They Stand Today.

Act of 1918, as Further Amended in 1940.

That any alien who, at any time, shall be or shall have been a member of any one of the following classes shall be excluded from admission into the United States:

(a) Aliens who are anarchists;

(b) Aliens who advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that advises, advocates, or teaches, opposition to all organized government;

(c) Aliens who believe in, advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized govern-

ment, because of his or their official character, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage;

(d) Aliens who write, publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, distribution, publication, or display, any written or printed matter, advising, advocating, or teaching, opposition to all organized government, or advising, advocating or teaching: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, or (2) the duty, necessity or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, or (3) the unlawful damage, injury or destruction of property, or (4) sabotage;

(e) Aliens who are members of or affiliated with any organization, association, society, or group, that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subdivision (d).

For the purpose of this section: (1) the giving, loaning or promising of money or any thing of value to be used for the advising, advocacy, or teaching of any doctrine above enumerated shall constitute the advising, advocacy, or teaching of such doctrine; and (2) the giving, loaning or promising of money or any thing of value to any organization, association, society, or group, of the character above described shall constitute affiliation therewith; but nothing in this paragraph shall be taken as an exclusive definition of advising, advocacy, teaching, or affiliation.

(Act of October 16, 1918, C. 186, Sec. 1, 40 Stat. 1012, as amended by Act of June 5, 1920, C. 251, 41 Stat. 1008, as further amended by Act of June 28, 1940, C. 439, Sec. 23, 54 Stat. 673; 8 U. S. C. Sec. 137, subsec. (a) to (f) inclusive.)

SEC. 2. Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes of aliens enumerated in section 1 of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.

(Act of October 16, 1918, C. 186, Sec. 2, 40 Stat. 1012, as amended by the Act of June 28, 1940, C. 439, Sec. 23, 54 Stat. 673; 8 U. S. C., Sec. 137 (g).)

Act of 1917, as Amended in 1940.

SEC. 19. That at any time within five years, after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; any alien who at any time after entry shall be found advocating or teaching the unlawful destruction of property, or advocating or teaching anarchy, or the overthrow by force or violence of the Government of the United States or of all forms of law or the assassination of public officials; any alien who within five years after entry becomes a public charge from causes not affirmatively shown to have arisen subsequent to landing; except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpi-

tude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who manages or is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute or protects or promises to protect from arrest any prostitute; any alien who shall import or attempt to import any person for the purpose of prostitution or for any other immoral purpose; any alien who, after being excluded and deported or arrested and deported as a prostitute, or as a procurer, or as having been connected with the business of prostitution or importation for prostitution, or other immoral purposes in any of the ways hereinbefore specified, shall return to and enter the United States; any alien convicted and imprisoned for a violation of any of the provisions of section four hereof; any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude: at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: *Provided*, That the marriage to an American citizen of a female of the sexually immoral classes the exclusion or deportation of which is prescribed

by this Act shall not invest such female with United States citizenship if the marriage of such alien female shall be solemnized after her arrest or after the commission of acts which make her liable to deportation under this Act: *Provided further*, That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment: *Provided further*, That the provisions of this section, with the exceptions hereinbefore noted, shall be applicable to the classes of aliens therein mentioned irrespective of the time of their entry into the United States: *Provided further*, That the provisions of this section shall also apply to the cases of aliens who come to the mainland of the United States from the insular possessions thereof: *Provided further*, That any person who shall be arrested under the provisions of this section, on the ground that he has entered or been found in the United States in violation of any other law thereof which imposes on such person the burden of proving his right to enter or remain, and who shall fail to establish the existence of the right claimed, shall be deported to the place specified in such other law. In every case where any person is ordered deported from the United States under the provisions of this Act, or of any law or treaty, the decision of the Secretary of Labor shall be final.

(b) Any alien of any of the classes specified in this subsection, in addition to aliens who are deportable under other provisions of law, shall, upon warrant of the Attorney General, be taken into custody and deported:

(1) Any alien who, at any time within five years after entry, shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

(2) Any alien who, at any time after entry, shall have on more than one occasion, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien or aliens to enter or to try to enter the United States in violation of law.

(3) Any alien who, at any time after entry, shall have been convicted of possessing or carrying in violation of any law any weapon which shoots or is designed to shoot automatically or semi-automatically more than one shot without manual reloading, by a single function of the trigger, or a weapon commonly called a sawed-off shotgun.

(4) Any alien who, at any time within five years after entry, shall have been convicted of violating the provisions of title I of the Alien Registration Act, 1940.

(5) Any alien who, at any time after entry, shall have been convicted more than once of violating the provisions of title I of the Alien Registration Act, 1940.

No alien who is deportable under the provisions of paragraphs (3), (4), or (5) of this subsection shall be deported until the termination of his imprisonment or the entry of an order releasing him on probation or parole.

(c) In the case of any alien (other than one to whom subsection (d) is applicable) who is deportable under any law of the United States and who has proved good moral character for the preceding five years, the Attorney General may (1) permit such alien to depart the United States to any country of his choice at his own expense, in lieu of

deportation, or (2) suspend deportation of such alien if not racially inadmissible or ineligible to naturalization in the United States if he finds that such deportation would result in serious economic detriment to a citizen or legally resident alien who is the spouse, parent, or minor child of such deportable alien. If the deportation of any alien is suspended under the provisions of this subsection for more than six months, all of the facts and pertinent provisions of law in the case shall be reported to the Congress within ten days after the beginning of its next regular session, with the reasons for such suspension. The Clerk of the House shall have such report printed as a public document. If during that session the two Houses pass a concurrent resolution stating in substance that the Congress does not favor the suspension of such deportation, the Attorney General shall thereupon deport such alien in the manner provided by law. If during that session the two Houses do not pass such a resolution, the Attorney General shall cancel deportation proceedings upon the termination of such session, except that such proceedings shall not be canceled in the case of any alien who was not legally admitted for permanent residence at the time of his last entry into the United States, unless such alien pays to the Commissioner of Immigration and Naturalization a fee of $18 (which fee shall be deposited in the Treasury of the United States as miscellaneous receipts). Upon the cancelation of such proceedings in any case in which such fee has been paid, the Commissioner shall record the alien's admission for permanent residence as of the date of his last entry into the United States and the Secretary of State shall, if the alien was a quota immigrant at the time of entry and was not charged to the appropriate quota, reduce by one the immigration quota of the country of the alien's nationality as defined in section 12 of the Act of May 26, 1924 (U. S. C., title 8, sec. 212), for the fiscal year then current or next following.

(d) The provisions of subsection (c) shall not be applicable in the case of any alien who is deportable under

(1) the Act of October 16, 1918 (40 Stat. 1008; U. S. C., title 8, sec. 137), entitled "An Act to exclude and expel from the United States aliens who are members of the anarchist and similar classes", as amended; (2) the Act of May 26, 1922, entitled "An Act to amend the Act entitled 'An Act to prohibit the importation and use of opium for other than medicinal purposes', approved February 9, 1909, as amended" (42 Stat. 596; U. S. C., title 21, sec. 175); (3) the Act of February 18, 1931, entitled "An Act to provide for the deportation of aliens convicted and sentenced for violation of any law regulating traffic in narcotics", as amended (46 Stat. 1171; U. S. C., title 8, sec. 156a); (4) any of the provisions of so much of subsection (a) of this section as relates to criminals, prostitutes, procurers, or other immoral persons, the mentally and physically deficient, anarchists, and similar classes; or (5) subsection (b) of this section.

(Act of February 5, 1917, C. 29, Sec. 19, 39 Stat. 889, as amended by Act of June 28, 1940, C. 439, Sec. 20, 54 Stat. 671; 8 U. S. C. Sec. 155.)